IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12795 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GAURANG MAHENDRABHAI PATEL

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 12795 of 2004

MR MAHESH BHAVSAR for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/01/2005

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner

has challenged the order passed by Police Commissioner, City of Vadodara, on 10th of July, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short) directing the detention of present petitioner as dangerous person and in pursuance of the said order the petitioner came to be detained from 10th of July, 2004.

2. The grounds of detention served upon the petitioner and placed on record reveal that the detaining authority relied upon two types of materials. Firstly, on three criminal cases registered against the petitioner under Section 379 of the Indian Penal Code on 24th of January, 2004, 5th of January, 2004 and 2nd of June, 2004 for the theft of Yamaha Motorcycle. The second type of material which the detaining authority relied upon two in-camera statements recorded by Sponsoring Authority on 7th of July, 2004 and 8th of July, 2004 and verified by the detaining authority on 9th of July, 2004 disclosing incidents of 13th of March, 2004 and 20th of May, 2004 wherein witnesses were harassed by the petitioner and while crowd gathered around, the petitioner and his associates rushed towards the crowd, people helter-skleter and terror was spread. The detaining authority came to the conclusion that the activities was dangerous and prejudicial to the maintenance of public order and, therefore, such activities are required to be prevented forthwith. The detaining authority after considering all the materials placed before him and even after considering other steps which may be taken against the petitioner under general law, came to the conclusion that the activities of the petitioner can be prevented under PASA Act, hence, he passed the order under challenge in this petition.

3. Learned Advocate Mr.M.N.Bhavsar for the petitioner and learned AGP Mr. H.M. Prachchhak for the respondents were heard at length. Affidavit-in-reply filed by the detaining authority as placed on record by learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner for quashing of the order under challenge and as controverted and opposed by learned AGP, it appears that the petition can be disposed of on the ground whether there was sufficient material before the detaining authority to come to the conclusion that by the activities of the petitioner maintenance of public order was disturbed. For which, undoubtedly, the detaining

authority took into consideration above two types of materials.

5. The facts of this case is covered by a decision of the Division Bench of this Court in the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT, as reported in 2000 (1) GLH 393, wherein on maintenance of law and order and maintenance of public order, after referring to many decisions of the Apex Court, the Division Bench of this Court observed as under in paras 20 and 21.

> "20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter skleter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.
>
> 21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.
>
> Again, in Mukstakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

6. Having regard to the facts of this case and having taken into consideration the principle of law as settled above by the Apex Court and explained by the Division of this Court in the above referred decisions of Ashokbhai Jivraj (supra), it is clear that the material which was available with the detaining authority only disclosed the breach of law and order and not breach of public order. The subjective satisfaction,therefore, arrived at by the detaining authority cannot be said to be legal, valid and accordance with law.

7. In this view of the matter, the order under challenge is required to be quashed and set aside.

8. In the result, this Special Civil Application is allowed. The order passed by Commissioner of Police, Vadodara City, on 10th of July, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Gaurang Mahendrabhai Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

p.n.nair